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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

742113-34

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name \_\_\_\_\_

Application Number

10/532,022

Filed

05/31/2005

First Named Inventor

Peter MIKKELSEN et al.

Art Unit

3724

Examiner

Phong H. Nguyen

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

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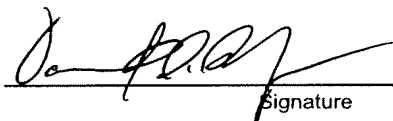
☐ applicant/inventor.

☐ assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 27,997

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 \_\_\_\_\_

  
Signature

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Typed or printed name

703-584-3273

Telephone number

October 1, 2008

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of 3 forms are submitted.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Peter MIKKELSEN et al.

Application No.: 10/532,022

Filed: May 31, 2005

For: APPARATUS FOR PORTION  
CUTTING OF FOOD PRODUCTS OR  
SIMILAR ITEMS

Group Art Unit: 3724

Examiner: Phong H. Nguysen

Confirmation No. 6147

**ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**

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Sir:

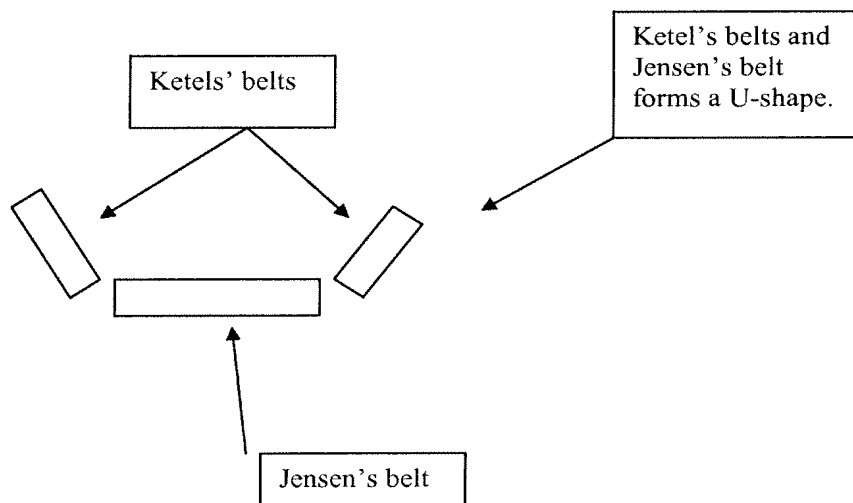
The following is presented in support of applicants Pre-Appeal Brief Request For Review of the Final Office Action mailed May 1, 2008, that is being filed herewith and in conjunction with the filing of a Notice of Appeal in connection with the above-captioned patent application.

### REMARKS

With regard to the rejection of claim 18 under 35 USC § 112, in view of the Examiner's indication in his Advisory Action that applicants' Amendment of June 24, 2008, would be entered for purposes of appeal, it is assumed that claim 18 will now be cancelled and this rejection withdrawn. The same is true for the Examiner's objection to the specification which relates to the embodiment recited in now cancelled claim 18.

All of the claims stand rejected under 35 USC § 103 as being unpatentable over the combined teachings of the Jensen et al. and Ketels references. This rejection is inappropriate and should be withdrawn for the following reasons.

As recognized by the Examiner, Jensen does not teach the conveying means having two conveyors forming a V-shaped configuration. For this reason, the Examiner has cited the Ketels patent and its Fig. 1 in particular. Furthermore, the Examiner has asserted that it would be obvious to flank Jensen's belt with a pair of angled belts, in the manner that Ketels' conveyor belts 2.1 flank the convex supports 2.3 disposed between them as represented by the following sketch that was incorporated into the Examiner's rejection:



However, this position ignores basic facts of the nature and use of the devices of these two patents which make the Examiner's position impractical and most certainly not obvious.

First, the Ketels conveying arrangement is designed specifically for the conveying of decapitated and gutted whole fish with the supports 2.3 being pressed into the interior of the body cavity such that the fish is held between the flanking conveyors 2.1 and the supports 2.3 for conveyance. In contrast, as can be seen from Fig. 2 of the Jensen reference copied below

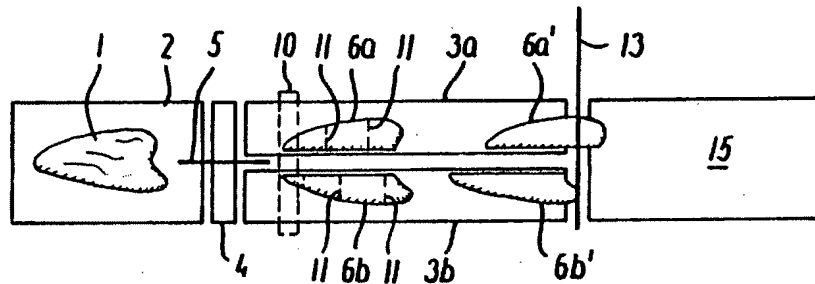


FIG. 2

Jensen's conveyor is wider than the products it is designed to convey such that placing of outwardly angled flanking conveyors as shown in the Examiner's figure above would serve no useful purpose since they would be incapable of contacting the products being conveyed. Put another way, the flanking conveyors 2.1 of Ketels are specifically designed to cooperate with supports 2.3 that are pressed into the work being conveyed and without such smaller-than-the-product conveying supports, the conveyors 2.1 cannot function to convey the product. Thus, it cannot be seen how it would be obvious to apply the flanking conveyors 2.1 of Ketels to Jensen's apparatus without the internal product supports that they are specifically designed to co-act with. This argument has not been addressed by the Examiner.

Still further, as was pointed out to the Examiner, it would not be obvious to apply the conveying arrangement 2.1, 2.3 in place of the conveyor 2 of Jensen et al. because it would decrease the utility of Jensen et al.'s device. That is, Jensen et al.'s apparatus is designed to cut a variety of meat and fish products (what appear to be a chicken breast filets being shown in the drawings), while the conveyor of Ketels is designed specifically for whole fish from which the head and bones have been removed, the convex supports 2.3 being specifically designed to enter into the stomach cavity of the fish body as shown in Fig. 3 of the Ketels reference. Clearly, it would not be obvious to limit the general utility of Jensen's apparatus by modifying it based on the limited utility conveying arrangement of Ketels, and it would not be obvious to take only part of Ketels' conveying arrangement and add it to that of Jensen when it could serve no useful purpose to do so as is explained in the preceding paragraph. Thus, on the one hand, Ketels's conveying arrangement is unsuitable for Jensen's meat and fish utility purposes, and on the other hand, taking only the part selected of Ketels apparatus selected by the Examiner produces an arrangement where the flanking conveyors cannot function. The Examiner's statement that these two patents are relevant to each other simply

ignores the above indicated points concerning the nature of their respective disclosures, while his comment in the Advisory Action that it would be obvious "to provide inclined belts as taught by Ketels to the food cutting device of Jensen for aligning food products to ensure that the food products are cut at their midsections" ignores the fact pointout above at why such belts would not have any effect of the proposed function not to mention that there is no reason to believe that such a function is needed given that the portioning scanning occurs at scanner 10, subsequent to cutting of the food products along their midsection via cutter 5.

Moreover, since claim 1 defines the conveying means as transporting the product from the scanning means to the cutting means, the corresponding conveying means of Jensen is the pair of conveyors 3a, 3b which take the longitudinally cut product halves 6a, 6b from the scanning area 10 to the cutting means 13 and not the conveyor 2 which conveys the incoming product to the cutter 5, alongside conveyor 2 being the location at which the Examiner has asserted it would be obvious to provide Ketels' side conveyors. Clearly, one would not make the pair of conveyors 3a, 3b inclined since it would cause the two halves 6a, 6b to fall together and into the gap between the conveyor halves 3a, 3b as they move through and beyond the scanning area 10, which will make accurate portion cutting impossible. On the other hand, placing inclined side conveyors at opposite sides of the conveyors 3a, 3b would make no sense because they would be unable to contact the longitudinally cut sections of the food product due to the greater width of scanner 10 than the conveyors 3a, 3b, and the food product being located inward of the outer edge of these conveyors. Moreover, even if the proposed inclined conveyors could be arranged to contact the longitudinally cut food product, such contact would be undesirable since it would act to push the halves 6a, 6b into the gap between the conveyor halves 3a, 3b.

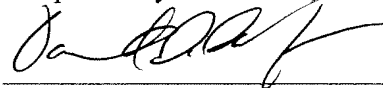
It is also pointed out that the Examiner's proposed combination of the Jensen et al. and Ketels references fails to recognize that which is apparent from all of the prior art of record when viewed as a whole. The Jensen patent represents the state of the art of portioning apparatus in 1999 in the company that is the owner of the present application (Norfo A/S). Despite the publication of Ketels in 1997, Dorhrendorf in 1978, Kawami in 1997, Koyama in 1984, Berry in 1996, and the well known use of angled conveyors for various purposes prior to development of the apparatus of the Jensen application, it was not until three years later that the present invention using angled conveyors was developed in the same company that produced the apparatus of the Jensen reference. This evidences that it was

neither as simple nor as obvious as the Examiner contends to go from the apparatus of the Jensen reference to that of the present application. Moreover, in doing so, the present inventors did not merely add flanking conveyors to the sides of Jensen's horizontal flat conveyor that is wider than any intended product, but rather replaced it with a set of conveyors that would collectively cradle and convey the products to be portioned.

As noted in the paragraph spanning pages 2 & 3 of the present application, the present invention is designed to provide reliable portion cutting of varied food items "such as pork, beef, or fish" with it being "ensured in simple manner that the items are kept stationary relative to the conveyors during the processing" since, as noted in the last paragraph of page 1, "to ensure a uniform cutting of the products in predetermined portion types or sizes, it is important that the products do not move on the conveyor once the shape of the product is registered by the vision system," i.e., the scanning means 6 of the present application and 10 of Jensen. However, as noted above, angling of the two conveyors 3a, 3b, would cause movement of the initially cut products as they move through and beyond the scanning area to the cutter 13. In this regard, even if somehow claim 1 were able to be construed as relating to the conveyor 2, claim 3 precludes such an interpretation since it recites the conveyor unit 3 which receives the products and that this conveyor unit "also" comprises two parallel mutually inclined conveyors 3a, 3b. Thus, in addition to the problem noted with regard to angling Jensen's conveyors 3a, 3b, the fact exists that Ketels does not teach an arrangement such as shown in applicants Fig. 1 where incoming product on one pair of mutually angled conveyors is passed to a second pair of mutually angled conveyors (as set forth in claim 3) and between which the scanning means is located (as set forth in claim 6), Jensen's scanner 7 being located above his second conveying unit 3a, 3b, not between it and the first conveyor 2.

Therefore, the proposed combination of the Jensen et al. and Ketels references is both unobvious would result in a device that is different from that claimed, so that the Examiner's rejection under § 103 based upon these references is inappropriate and should be withdrawn.

Respectfully submitted,



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